



Short Article

Capital Punishment in India

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Abstract: *India being a developing country there are many legislations enacted to control crime rates in the society. All punishments are based on one principle i.e., there shall be a punishment for the wrongdoer. To maintain law and order in society, capital punishment is the highest degree of punishment that can be awarded to a criminal. Mere killing a person in the name of justice does not serve any purpose; one should focus on eliminating the criminal acts but not the criminal. Over 1000 executions are made in China every year, the only country in the world to practice the death penalty at its peak. In India, the doctrine of “rarest of the rare” is followed and often the capital punishment gets commuted to lifetime imprisonment and whereas in China the death penalty once granted cannot be revoked at any cost. This is the reason why the United Nations opposed the concept of capital punishment and stated that “Life is precious and death is irrevocable”.*

Keywords: *Capital Punishment, Rarest of the rare.*

Introduction

The term capital punishment is derived from a Latin word which means “regarding the head”. Capital punishment refers to coercion used to enforce the law in modern civilization. It is a severe punishment which is to be awarded for the most grievous crimes. In ancient times there were no specific laws to prescribe about the quantum of the punishment to be given. King acted as the sovereign and the punishment given to criminals was left to his discretionary powers. The most relevant reasons for imposing the death penalty is to bring fear in society and to inflict punishment to the wrongdoer.

The death penalty is an integral part of the criminal justice system. The death penalty should be awarded only when all the alternatives are unquestionably foreclosed. Capital crimes are those crimes which result in the death penalty. The enforcement of the law in capital punishment differs from state to state as well as country to country. It is a process where a person is put to death by the government for his immoral acts. In India, many Human Rights Organizations conducted various Me-Too movements saying capital punishment should be abolished as one's right to life is getting infringed. Even the Indian Constitution gave powers to the president to grant pardons to the offenders under article 72. Capital punishment is given for robbery, rape, murder, the war against the government, etc. which are strictly prohibited by the law. The court will give the death penalty only when the amount of crime is beyond reasonable foreseeability based on the situation of the case.

Capital Punishment in India

It is a legal death penalty in our country awarded for the most grievous and heinous crimes. Under article 21 of the Indian Constitution says “*No person shall be deprived of his life or personal liberty except as according to the procedure established by law*”. Every Indian citizen is guaranteed the right to life and no one should be deprived of exercising their fundamental rights. After the Independence there are fifty-two capital punishment is executed in India. In the case of “*Mithu v. State of Punjab*” The Supreme Court struck down the IPC Section 303 which provides a death sentence for the offenders. India voted against a United Nations General Assembly resolution calling for a prohibition on the death penalty. In November 2012, India again

continues its posture on capital punishment by voting against the UN General Assembly draft resolution request to ban the death penalty.

Arguments: Favor of Death Sentence

- One should measure the gravity of the crime committed before granting a death sentence. For instance, if a person who has committed murder or rape; then he must be given the death penalty because of the crime in which he was indulged is of a very grave nature.
- The propagators often believe that awarding the death penalty would create fear among other criminals. This would create fear of losing life and it would act as a deterrent and refrains others from committing such heinous crimes.
- Instead of giving life imprisonment, if the death penalty is awarded then society would be freed from the threat of such a person. However, this logic applies only to serial killers or repetitive offenders who tend to commit or indulge themselves in one or the other crime which they encounter in their daily life.
- Another possibility in support of the death penalty is that; the offender is either tortured by the jail official or by fellow criminals. There's no point of granting life imprisonment in these cases because the offender had no possibility of outcome living such futile life behind the bars.
- In other scenarios, imprisoning someone for the rest of their lifetime is far more expensive than executing him. But this principle is not applicable to first-time offenders, unlike repetitive offenders. Repetitive offenders are those who commit endless crimes one after the other and they deserve only a death sentence because if the court awards life imprisonment for his brutal acts, there's a possibility that he would do the same after completion of his term period in jail. Also, because of his violent behavior, he can also cause damage to fellow criminals.
- Sometimes the death penalty is made equivalent to the amount of pain inflicted upon the victim. However, the proponents of the application of the death sentence, argues that those who have taken away somebody's life deserves no right to live on this earth. Whatsoever

this argument seems favorable to the victim's family. There could be thousands of reasons for the same because if any offender is left open in the society, there's a possibility of him taking advantage and commit many more crimes in the near future. Executing is the best available option to take this argument into consideration in view of the best interests of the society at large.

- A criminal who has been awarded life imprisonment for his barbaric acts; one can anticipate his violent behavior. When talking about the safety of fellow prison inmates, it is better to award the death penalty to protect these people from future attacks.

These are some of the points which emphasize on the importance of awarding a death sentence in view of public safety. However, to some people, it is an immoral act of violence.

Arguments: Against Death Sentence

- The first disadvantage is, executing the criminal makes no difference between us and a criminal who has committed a terrifying crime. As one could sense, executing the criminal would not terminate the crime itself.
- Awarding the death penalty is not always appropriate because of the financial status. A broken person cannot afford a good lawyer have to succumb to the death sentence; while wealthy people can easily afford and maintain good lawyers and there's a less probability of awarding the death penalty to these people. This does not sound right; therefore, it should be abolished completely like in other countries to eradicate disparity in the society. Everyone shall be equally protected by law irrespective of their family background.
- First-time offenders deserve a second chance to live and if they are deprived of such privilege; it would seem unfair because the crimes are related to the psychology of an individual. It all depends from where the individual is born and brought up and other factors like environmental conditions, family background, etc. come into play. By giving a second chance, the offender might realize his wrongful act.

- The reason behind the abolition of the death penalty is to protect the innocent from being punished. According to Amnesty International: As long as human justice remains fallible, the risk of executing the innocent can never be eliminated.
- It is also argued that awarding the death penalty would not guarantee in decrease of the crime rate. Although, crimes are still prevalent where the death penalty exists and thus it cannot be said that the implementation of the death penalty would eradicate the happening of crimes.
- In most of the developed countries, the death penalty has been abolished as a form of punishment.

The UN Secretary General's report on capital punishment is presented before Human Rights Council and held that some 170 States have abolished.

Capital Punishment in the Indian Context

- Prior to the introduction of the Criminal Procedure Act of 1955, imposing the death sentence on the offender is the rule of law, and life imprisonment an exception. Also, the courts were asked to interpret for awarding lighter punishment than death punishment for capital crimes.
- After the Amendment of Cr PC [Criminal Procedure Act of 1955], the courts can decide to give either the death penalty or life imprisonment using their discretionary powers.
 - The courts were advised to give reasons for awarding the extent of maximum penalty as per Section 354 (3) of the Cr PC, 1973.
 - All the circumstances stood upside down and the whole situation has been reversed. Here, life imprisonment is the rule and the death sentence are exceptional.
 - Moreover, despite a global moratorium against the death penalty by the UN, India retains the death sentence.
 - According to the 35th law commission report 1967, India rejected the proposal to abolish the death penalty.

- After the Independence, only 720 executions have taken place according to the official statistics and the majority of the cases were commuted to life imprisonment.

Some of the Capital offenses in IPC

- Section 120B - Being a party to criminal conspiracy to commit a capital offense.
- Section 121 - Treason, for waging war against the Government of India.
- Section 132 - Abetment of mutiny actually committed.
- Section 194 - perjury resulting in the conviction and death of an innocent person.
- Section 302 - Murder.
- Section 305 - Abetment of suicide by a minor or an intoxicated person.
- Section 376A - Rape of a woman or injury which causes her death.

Some other Criminal Statutes

- Abetment of Sati is punishable with capital punishment under the Commission of Sati (Prevention) Act, 1987
- Giving false evidence leading to the death of an innocent person under SC and ST (Prevention of Atrocities Act), 1989.
- Under the Protection of Children from Sexual Offences (POCSO) Act, 2012; rape of a minor who is below 12 years is punishable with the extreme death penalty.
- Manufacturing or producing certain drugs which are strictly prohibited by law is made punishable under the Narcotic Drugs and Psychotropic Substances Act, 1985.
- The death penalty is also specified in offenses committed by the members of armed forces under the Unlawful Activities (Prevention) Act, 1967.

Cases

Jagmohan Singh vs. State of Uttar Pradesh¹

In this case, the petitioner challenges the Supreme Court on the constitutional validity of imposing capital punishment on the accused for committing murder. This case was challenged on the ground that it was violative of Articles 19 and 21. The petitioner contended that there is no specific law in the code of criminal procedure stating why and in which situations the accused will be awarded life imprisonment or when with the death sentence. The verdict given by the five-judge bench of the Supreme Court was unanimous and held that the death penalty was not violative of Articles 14, 19, and 21. It was held that the judge has discretionary powers to make choice between the death penalty or life imprisonment on the basis of the nature of the facts presented before them during the trial.

Rajendra Prasad vs. the State of UP

In this case, Justice Krishna Iyer said that imposing of death sentence violates Articles 14, 19, and 21. He further stated that to impose the death penalty the two things must be fulfilled.

- The special reason should be recorded for imposing the death penalty in a case.
- The death penalty must be imposed only in extraordinary situations.

Bachan Singh vs. the State of Punjab²

In this case, the constitutional validity of the death penalty was challenged again before the Supreme Court. The five judges bench which by a majority of 4 to 1 (Justice Bhagwati dissenting) overruled the previous judgments made in *Jagmohan Singh v. State of UP* and *Rajendra Prasad v. State of UP*. The court observed that capital punishment as an alternative punishment for murder is reasonable and hence, they do not violate Articles 14, 19, and 21. The Supreme Court

¹ AIR (1973) SC 947

² (1980) 2 SCC 684

made it clear that the death penalty should be imposed only in extraordinary circumstances i.e., rarest of the rare cases.

Macchi Singh vs. the State of Punjab³:

The Supreme Court laid down certain guidelines as to when the death sentence should be imposed. Justice Thakkar speaking for the court held five categories of situations deserving extreme penalty;

Firstly: the commission of murder to be taken into consideration- when a person commits brutal murder, for instance when the victim is thrown into the fire alive or when the body is cut into pieces.

Secondly, when any act is committed with an intention e.g. A hired assassin

Thirdly, where a person from Scheduled Caste or Minority Community is murdered e.g. Burning bride for dowry.

Fourthly, the magnitude of the crime committed.

Fifthly, the personality of the victim of murder.

Conclusion

After the gang rape of young woman Nirbhaya in Delhi in 2012, certain amendments were brought under consideration and are added in the Indian Penal Code 1860 amounting for certain categories of rapes or repetitive offenders shall be subjected to the death penalty. In the recent scenario, Supreme Court supported the rights of death row convicts stating that convicts shall not be deprived of meeting their family, friends, or mental health professionals for a reasonable period as it is considered to be their fundamental right to dignity and equality.

If we see Delhi man gets death for the murder of the 12-year-old boy. Whereas in Hathras Case the investigation is still going on to find out the culprits. Justice delayed is justice is denied, although Nirbhaya Convicts were given the death penalty but it was too late. Punishment should

³ AIR (1983) SC 957

be based on the amount of crime committed. Therefore, one should get the death penalty only when the severity of the crime is no less than awarding a death sentence.